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 8 SAMUEL DIGIACOMO

9
 10 UNITED STATES DISTRICT COURT
 11
 NORTHERN DISTRICT OF CALIFORNIA

12 SAMUEL DIGIACOMO,

13 Plaintiff,

14 v.

15 EX'PRESSION CENTER FOR NEW
 16 MEDIA, INC., d/b/a EX'PRESSION
 17 COLLEGE FOR DITIGAL ARTS, and
 Does 1 through 100,

18 Defendant.

CASE NO. 08-cv-01768 MHP

**DECLARATION OF JACQUELINE
 DIGIACOMO IN SUPPORT OF
 OPPOSITION TO MOTION TO COMPEL
 ARBITRATION AND TO DISMISS OR,
 ALTERNATIVELY, TO STAY CASE**

Date: September 8, 2008
 Time: 2:00 p.m.
 Location: Courtroom 15, 18th Floor
 450 Golden Gate Ave.
 San Francisco, CA 94102
 Judge: Hon. Marilyn Hall Patel

20 I, Jacqueline DiGiacomo, declare:

21 1. I am the mother of the plaintiff Samuel DiGiacomo (hereinafter "Sam"), in this
 22 action.

23 2. The facts set forth in this Declaration are based on my personal knowledge; if
 24 called as a witness, I could competently testify under oath to the facts as set forth in this
 25 Declaration.

26 3. On September 18, 2006, Sam had an appointment with Clint Schahrer in the
 27 Admissions Office of Ex'pression Center for New Media, Inc., d/b/a Ex'pression College for
 28 Digital Arts (herein, "Ex'pression College"), defendant in this action. Sam was to take a test

1 related to his admission and to fill out the application forms for Ex'pression College. I
2 accompanied Sam to this appointment.

3 4. While Sam was in another room taking the "screening exam" (as Mr. Schahrer
4 called it), which was after the forms had been completed and given to Mr. Schahrer, I explained
5 to Mr. Schahrer that Sam has been diagnosed with Asperger's Syndrome (a type of Autism) and
6 Bipolar Disorder. I further explained that although Sam is extremely intelligent, consistent with
7 his Asperger's Syndrome, he often displays inappropriate behavior.

8 5. Mr. Schahrer asked me what type of accommodations Sam needed.

9 6. I told him that Sam would need someone to be his advocate in helping him to
10 understand appropriate behavior, and someone to come to when he has a problem with other
11 students and teachers.

12 7. Mr. Schahrer told me that Sam would be welcome to come to him for advice or
13 advocacy.

14 8. While Sam was filing out a form, I saw that Sam made note of his medical
15 diagnoses (Aspergers Syndrome and Bipolar disorder) on his Ex'pression College Student Health
16 Notice, which was one of the forms Sam filled out as part of the application process. Sam also
17 listed the medications that had been prescribed for him and that he was taking (Depakote and
18 Zypraxa), and listed me as the emergency contact person. Sam signed and dated the paragraph
19 that read, "I affirm that the information above is true to the best of my knowledge and that I am in
20 good health and able to complete the above named course of study." The Notice was signed by
21 Sam and Mr. Schahrer. The Notice stated that one copy would go to the Registrar, one to
22 Admissions, and one to Sam. Sam and I were given his copy of the Notice. A true and correct
23 copy of the Student Health Notice provided to Sam and me is attached to this Declaration as
24 Exhibit A.

25 9. I offered to provide to Mr. Schahrer documentation in the form of copies of Sam's
26 medical records for verification of Sam's two medical conditions (Asperger's Syndrome and
27 Bipolar Disorder) which Sam noted on the Student Health Notice. Mr. Schahrer stated that such
28 documents were not needed at this time.

1 10. Neither before nor during nor after the time that Sam was filling out the
2 application forms for Ex'pression College did Mr. Schahrer explain to Sam or to me that in
3 applying to Ex'pression College he (Sam) was giving up his legal right to sue the Ex'pression
4 College in court if a dispute were to arise and that he would be limited in such a situation to the
5 use of arbitration as the sole means to resolve any dispute. There was no mention whatsoever as
6 to the form or scope of arbitration that was set forth in the application form, nor of the costs or
7 procedures associated with this type of arbitration.

8 11. I was with Sam from the moment we together walked into Mr. Schahrer's office
9 until Sam completed the application forms, except when Sam was taking the "screening exam" in
10 a nearby room and was being interviewed alone by Mr. Schahrer; at no time either before, during,
11 or after Sam was completing the application forms or taking the "screening exam" was any
12 reference, explanation, or comment made to Sam or to me regarding the arbitration clause
13 contained in the Ex'pression College application.

14 12. Although Sam initialed the paragraph in the Enrollment Form that states that he
15 was given a copy of the "complaint and grievance procedure" (which I assumed was somehow
16 related to the Bureau of Private Postsecondary and Vocational Education), neither Sam nor I ever
17 received a copy of that document or any other "complaint and grievance procedure" document of
18 any type; no such document was ever mentioned verbally to either Sam or me. Mr. Schahrer
19 never explained the difference between the "complaint and grievance procedure" and the
20 arbitration provision to either Sam or me at any time. Neither Sam or I received at any time a
21 copy of the American Arbitration Association rules that were to apply to the arbitration
22 procedures noted in the Enrollment Agreement. A true and correct copy of the copy of the
23 Enrollment Form that was given to Sam is attached as Exhibit B.

24 13. During the approximately two-hour period that Sam and I were present at
25 Ex'pression, Sam completed all of the application forms, including the Enrollment Agreement
26 and the Student Health Notice, which upon completion were given to Mr. Schahrer; took the
27 "screening exam;," and accompanied me to the financial aid office.

28 14. Much to our surprise, Sam was accepted for admission on the spot. We thereafter

1 went to the financial aid office so that Sam could apply for financial aid to cover the cost of the
2 education he was to receive. Sam began classes approximately 9 days later. He successfully
3 completed four semesters at Ex'pression before he was expelled.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Dated this 17 day of August, 2008 at Union City, California.

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8 
9 JACQUELINE DIGIACOMO

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11 Ropers Majeski Kohn & Bentley
12 A Professional Corporation
13 San Francisco
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Exhibit A

student health NOTICE



Ex'pression College
for Digital Arts
6601 Shellmound Street
Emeryville, CA 94608

Student Name: DI GIOACCHINO SAMUEL
 LAST SAMUEL FIRST DI GIOACCHINO M.I.
 Student Address: 4735 Louise Lane
 STREET ADDRESS / PO BOX # UNION CITY APT. # CA
 CITY UNION CITY STATE CA ZIP 94587
 Telephone #: (510) 487-1731 Birth date: _____

FAMILY PHYSICIAN

Name: _____ LAST _____ FIRST _____ M.I. _____
 Address: _____ STREET ADDRESS / PO BOX # _____ APT. # _____
 Address: _____ CITY _____ STATE _____ ZIP _____
 Telephone #: _____ Message Phone #: _____

IN AN EMERGENCY, NOTIFY

Name: D. Di Giacomo LAST D. FIRST Jacqueline M.I. J.
 Address: 4735 Louise Ln. STREET ADDRESS / PO BOX #
 Address: Union City CITY CA STATE 94587 ZIP
 Telephone #: 510 487-1731 Message Phone #: 510 487-1731

PART A: MEDICAL HISTORY

Please list any health-related problems or conditions for which you are currently under a physician's care:

Aspergers Syndrome / Bi-polar

Please list any prescribed medications you are currently taking under a physician's care:

Depakote. Zyprexa.

PART B: STATEMENT OF HEALTH

I affirm that the information above is true to the best of my knowledge and that I am in good health and able to complete the above named course of study.

Student signature: Samuel Date: 9/18/06

This Student Health Notice has been reviewed with _____
 and based on his/her evidence of good health he/she
 has been admitted to Ex'pression College for Digital Arts.

School Official Signature: [Signature] Date: 9/18/06

Exhibit B

enrollment AGREEMENT



Ex'pression College
for Digital Arts
6601 Shellmound Street
Emeryville, CA 94608

This agreement is made on the 18 day of September, 2006 by and between EX'PRESSION COLLEGE FOR DIGITAL ARTS, herein referred to as ECDA and RONALD DIAZ ROMO, herein referred to as the STUDENT.

Student Address: 4739 LOUISE VINE

STREET ADDRESS/PO BOX

APT. #

Union City

CA

44507

STATE

ZIP

Student Phone Number: (510) 487-1721

This enrollment agreement, when signed by the student and accepted by the school is a legally binding agreement.

Ex'pression College for Digital Arts is located at 6601 Shellmound Street, Emeryville, CA 94608. All instruction is provided at this address.

Any questions or problems concerning this school which have not been satisfactorily answered or resolved by the school should be directed to the Bureau of Private Postsecondary and Vocational Education, 1625 North Market Blvd., Suite S202, Sacramento, CA 95834.

Student's Initials: SD I have been given a copy of the complaint and grievance procedure.

1. ENROLLMENT INFORMATION:

1.1 The student is enrolling in the program marked below, which is _____ academic months. Four Academic Years are required for completion of a Bachelor of Applied Science Degree.

Bachelor of Applied Science in Motion Graphic Design
(4 Academic Years)

ECDA's Motion Graphic Design Program develops students' knowledge and skills through an intensive series of visual design, animation, interactive and motion graphics theory courses. A total of _____ Semester Credit Units are required to complete the program.

Bachelor of Applied Science in Animation and Visual Effects
(4 Academic Years)

ECDA's Animation and Visual Effects Program is designed to enhance the student's knowledge and skills through an intensive series of courses including 3D modeling and animation, texture and lighting, compositing, digital film and video effects, graphics for the Internet and more. A total of 124 Semester Credit Units are required to complete the program.

Bachelor of Applied Science in Sound Arts (4 Academic Years)

ECDA's Sound Arts Program offers students the opportunity to take part in numerous recording sessions, to experience mixing for CD release, to lock audio for picture, to learn surround sound, to learn DVD authoring, and many other technologies. Students explore first-hand numerous live sound and lighting applications, acoustical design, developing an understanding of the psychology of the studio, and much more. A total of _____ Semester Credit Units are required to complete the program.

1.2 Please see the College catalog for detailed program descriptions.

Student Initials: SD I have received a College catalog.

1.3 The starting date for the program of enrollment is 9/27/06.

2. CLASS TIMES

2.1 Although most classes occur between the hours of 8:00 am and 6:00 pm, ECDA is a 24-7 facility; labs and lectures may be scheduled accordingly.

3. GRADUATION REQUIREMENTS AND DOCUMENTS AWARDED

3.1 To receive a degree from ECDA, a student must complete the following:

- 1) Must have achieved a minimum cumulative academic grade of 71%
- 2) Must have a minimum 85% attendance for class
- 3) Must have successfully completed all applicable courses

- 4) Must have fulfilled all financial responsibilities with regard to ECDA and be in good standing
- 5) Must complete an exit interview with the career development department
- 6) Must complete the last 25% of his/her education on the main campus at ECDA.

3.2 When the student has completed all graduation requirements, the institution will award a Bachelor of Applied Science Degree.

4. TERMS AND CONDITIONS

4.1 Eligible reasons for delaying a start after a student has already enrolled are:

- 1) Family death or serious illness
- 2) Uncontrolled events, natural disasters or
- 3) Military service. If a student must delay his/her start, he/she must notify the Admissions Department in writing at least 10 days prior to the scheduled start date. The start must be rescheduled within six months.

4.2 ECDA reserves the right to make adjustments in the official calendar of start dates. Such alterations will be officially announced no later than 3 months before the change occurs except when a change must be made due to an unforeseen event or a natural disaster. Because ECDA's refund policy is based on the time that classes have been in session, such changes will have no impact on the refund policy and its impact on students.

4.3 ECDA reserves the right to make changes in programs, materials, schedules, faculty and staff when such changes are in the best interest of the student and/or the institution. Changes in programs and schedules may alter a student's expected graduation date. Students will be responsible for fulfilling graduation requirements in effect when a student has enrolled, reenrolled after withdrawing, or been reinstated after a dismissal. Additional tuition may be required for coursework that is required because of such an enrollment change.

4.4 ECDA reserves the right to terminate this agreement in the event of:

- 1) violation of the standards of conduct
- 2) destruction of property by the student
- 3) non-payment of tuition & fees
- 4) unsatisfactory academic progress
- 5) poor attendance

4.5 The student's dissatisfaction with or non-receipt of educational services offered by ECDA does not excuse the student from repayment of any private loan, state loan or grant, federal loan, SLS, or other loan whatsoever made to the student for enrollment and completion of training at ECDA.

4.6 ECDA offers occupational training, not employment. ECDA provides placement assistance, but makes no guarantee of job placement or employment.

Student Initials: SD I have received a copy of the school's Performance Fact Sheet, which details completion and placement statistics.

5. BUYER'S RIGHT TO CANCEL

5.1 The student may terminate this agreement by giving written notice by midnight of the fifth business day following the date of this agreement to the Office of the VP of Admissions, Ex'pression College for Digital Arts, 6601 Shellmound Street, Emeryville, CA 94608.

5.2 Students who have not visited the school prior to enrollment will have the opportunity to withdraw without penalty within five business days following either the regularly scheduled orientation or following a tour of the school facilities and inspection of equipment where training and services are provided.

Student Initials: SD I have had a tour of the school.

6. ARBITRATION AGREEMENT

- 6.1 Any dispute arising from enrollment at Ex'pression College for Digital Arts, no matter how described, pleaded or styled, shall be resolved by binding arbitration under the Federal Arbitration Act conducted by the American Arbitration Association ("AAA") at Emeryville, California, under its Commercial Rules. All determinations as to the scope, enforceability of this Arbitration Agreement shall be determined by the Arbitrator, and not by a court. The award rendered by the arbitrator may be entered in any court having jurisdiction.

Student Initials: SV I have read and understand the Arbitration Agreement.

7. REFUND POLICY

7.1 Cancellation or Withdrawal Prior to Start of Instruction

The school will refund all charges less \$95 for the non-refundable application fee (\$10 for Veterans) if the enrollment agreement is cancelled prior to the first day of instruction or if a student withdraws within five days after orientation.

7.2 Withdrawal or Termination Prior to Completion of Enrollment Period

If a student wishes to withdraw from ECDA he/she must make notification in writing to the Office of the Registrar at 6601 Shellmound St. Emeryville, CA 94608. If the student withdraws he/she will receive a pro-rata refund if the student has completed 60% or less of the academic year for which the student was charged. If the student has completed more than 60% of the academic year for which the student was charged, the tuition is considered earned and the student will receive no refund. Refunds will be calculated on the basis of the last day of actual attendance. Refunds will be paid within 30 days following the date the student notifies the Office of the Registrar of withdrawal or if the student is terminated from school a refund will be paid within 30 days following the date the student was notified of termination. A non-refundable Administrative Fee of \$95 will be charged for all students who withdraw or are terminated prior to completion of the enrollment period. The method for calculating a pro-rata refund is:

Total tuition charged for the academic year / total number of clock hours for the academic year = per clock hour tuition.

Per clock hour tuition x number of clock hours incurred
= total tuition owed by student.

Total tuition owed by student + administrative fee
= total owed by student.

Total tuition paid for academic year - total owed by student
= refund amount.

The above policy complies with State of California requirements.

7.3 Return of Federal Funds

Refunds are allocated to financial sources in accordance with Federal Department of Education regulations. Regulations require refunds for students who receive Federal grants and/or loans and withdrew during their period of enrollment to be returned to the Federal Government. Additional information on return of Federal Funds is available through the Financial Aid Office.

8. STUDENT TUITION RECOVERY FUND

- 8.1 As of January 1, 2002, California Education Code Section 94945 requires all colleges in the State of California licensed by the Bureau of Private Postsecondary and Vocational Education (BPPVE) to collect a fee from every new student to be remitted to the California Student Tuition Recovery Fund (STRF). This fund is administered by the State of California's BPPVE. The STRF assessment rate for enrollment agreements signed on or after January 1, 2003 is \$2.50 per \$1000 of tuition charged (rounded to the nearest 1,000). Based on ECDA's tuition of \$ 16,950, your STRF fee is \$ 42.50. Non-Californian residents or recipients of third party payor tuition are not eligible for protection under and recovery from the Student Tuition Recovery Fund and are not required to pay the STRF fee. The STRF fee is due on the start date, unless the State of California has determined that no assessment shall be levied pursuant to California Education Code Section 94945.

9. TUITION, FEES, METHOD AND TERMS OF PAYMENT

9.1 Tuition & Fees

- Tuition for academic year 16,950 for the program of enrollment is \$ 16,950.
- Application Fee of \$95 or \$10 for Veterans (For new students only, to be submitted with Application for Admission. This is a non-refundable fee)
- Returned Check Fee of \$50 (Charged for all checks returned for non-sufficient funds. The student is responsible for all late payment fees and collection costs for past due balances and will pay bank fees and charges for returned checks.)

- Late fee of \$50 (Will be charged if a payment is five or more days late. This is a non-refundable fee.)
- Installment Fee of \$25 per installment (if the student chooses payment Option 3. This is a non-refundable fee.)

Tuition includes all materials, books (General Education books are the property of ECDA and must be returned), and equipment required for the entire program such as: associated course books, art supplies, and relevant materials. Charges for repeated courses are not included in the above and are calculated at the per credit unit rate effective at the time of re-take. The tuition and other charges noted above are solely for one academic year. In order to complete the program of enrollment, it is necessary that the student pay tuition for every remaining academic year required to complete the program. (Four academic years are required for completion of Bachelor of Applied Science Degree.)

- 9.2 The school reserves the right to change tuition rates. The tuition rates quoted in this enrollment agreement will remain in effect only for one academic year. Tuition for each succeeding academic year will be charged at the published tuition rate for that year. Changes in tuition will be announced five (5) weeks before they become effective. If a student withdraws and reenters or is reinstated after a dismissal he/she may also be subject to new tuition rates. Students who have prepaid tuition for the entire program will have no change in tuition unless they withdraw and reenter or are reinstated after a dismissal.
- 9.3 The student will meet with the Financial Aid Office before the beginning of each academic year and review payment options and student loan information. Payment amounts and due dates are based on the payment option chosen by the student. If the student elects a payment plan, it will be in compliance with the Federal Truth in Lending retail installment requirements and will become part of this enrollment agreement.
- 9.4 All payments must be in US dollars and made by check, money order, or cash to Ex'pression College for Digital Arts and are due in accordance with the payment option chosen.

10. NOTICE CONCERNING TRANSFERABILITY OF UNITS AND DEGREES EARNED AT OUR SCHOOL

Units you earn in our degree program in most cases will probably not be transferable to any other college or university. For example if you entered our school as a freshman, you will still be a freshman if you enter another college or university at some time in the future even though you earned units here at our school. In addition, if you earn a degree, diploma, or certificate in our degree program, in most cases it will probably not serve as a basis for obtaining a higher level degree at another college or university.

Student Initials: AD I have read and understand the Notice Concerning Transferability of Units and Degrees Earned at Ex'pression.

My signature below certifies that I have read, understood, and agreed to my rights and responsibilities, and that the institution's cancellation and refund policies and arbitration clause have been clearly explained to me. I have received a copy of this agreement.

SIGNATURE OF STUDENT	DATE	SIGNATURE OF PARENT OR GUARDIAN	DATE
<u>D. H. Kidd</u>	8/19/08	<u>J. S. Kidd</u>	8/19/08
SIGNATURE OF SCHOOL OFFICIAL	DATE OF ACCEPTANCE		
<u>D. H. Kidd</u>	8/19/08		